IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 345 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BHARAT SANCHAR NIGAM LIMITED

Versus

R JAMNADAS & CO.

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Appearance:

1. Civil Revision Application No. 345 of 2003

MR ASIM J PANDYA for Petitioner No. 1

MR AJ SHASTRI for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. Bharat Sanchar Nigam Limited, petitioners original defendants has filed this revision application under sec.115 of the Code of Civil Procedure challenging

the order dated 13th August, 2003, passed by the learned 5th Jt.Civil Judge (S.D.), Junagadh - order below Exh.13. The learned Judge by his impugned order was pleased to reject the application Exh.13 filed by the defendant. The learned Judge has rejected the application for appointment of arbitrator and directed that the civil court has a jurisdiction and the matter will go as per the civil proceedings.

2. This Court has already issued rule and this Court passed the orders on 14.11.2003, 22.9.2004 and 21.10.2004. Mr.A.J.Shastri, learned advocate appeared on behalf of respondent. Both the petitioner and the respondent have amicably settled the matter and in view of the same following order is passed after obtaining consent of the parties.

3. In view of the overall compromise of the entire matter which is subject matter of civil suit No.112/03 pending on the file of the learned Civil Judge (S.D.), Junagadh, the parties to these proceedings hereby agree on the following terms:

(1) Out of 22 bills mentioned in the plaint, 12 bills already had been settled and same is conveyed to respondent of this petition, remaining 10 bills are pending for payment, 5 bills out of these 10 bills belonging to work order No.E-279, D-38, D-63, D-60, OFC-99 of Estimate No.2544 D(b)/00-01, 2370 D(b)/00-01, 2370 d(b)/00-01, 2310 D(b)/00-01, and 2158 D(b)/99-00 respectively will be processed for payment as per respective tender's terms and conditions and payment will be released keeping stores reconciliation pending.

(2) All other issues mentioned in the plaint and for fulfillment of terms and conditions of tenders such as:-

(A) Risk and cost recovery to respondent of the petition, M/s. R. Jamnadas & Co.

(B) Store reconciliation.

(C) Processing of bills of respondent of this petition, M/s. R.Jamnadas & Co. submitted after 5.7.2001 which was the last date decided by competent authority for submission of bills for completed

works.

It may be noted that, as per tender agreement, the petitioner - original defendant will appoint arbitrator and arbitrator will decide Item No.A,B,C of above item No.2. It may be noted that payment of these bills to be paid as expeditiously as possible within ten days from today.

(3) The amount of security deposit and amount recovered by petitioner, from respondent M/s.R.Jamnadas & Co., shall be retained by BSNL Junagadh until arbitrator awards passed and agreed.

(4) As per the view of respondent M/s.R.Jamnadas and Co., the time limit of appointment of arbitrator may be fixed by three months. As per the view of petitioner, the appointment of arbitrator is not under control of the petitioner, the appointment of arbitrator is a function of higher authority to the petitioner and the completion of arbitration proceedings are subject to the co-operation of respondent to the arbitrator. So, both the parties agree with the issue of time limit of appointment of arbitrator may be decided by this Court.

This Court hope and trust that the arbitration proceedings will concluded as expeditiously as possible, preferably within six months from the date of commencing the arbitrator and both the parties will cooperate with the arbitration proceedings.

(5) The parties to the proceedings undertaking to withdraw all the cases and proceedings filed by respective parties and in view of this compromise arrived at, pending proceedings and order passed relevant to the cases will not be referred to any Hon'ble Court for contempt of court in any circumstances.

(6) If arbitrator's award is not agreed upon, decision of this Court for further directions for settlement of dispute will be binding to both the parties.

4. The aforesaid terms will have to be scrupulously

observed by extending co-operation by both the sides. The original consent terms signed by both the parties is taken on record. The applicant will appoint the arbitrator by 6th December, 2004.

5. Subject to aforesaid observations and directions, this Civil Revision Application is disposed of with no order as to costs. Rule is discharged to the aforesaid extent.

( K.M. Mehta, J. )

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